STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1468

State of Minnesota,
Respondent,

vs.

David William Reynolds,
Appellant.

Filed August 30, 2021
Affirmed
Hooten, Judge

Otter Tail County District Court
File No. 56-CR-19-1759

Keith Ellison, Attorney General, Ed Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Michelle Eldien, Otter Tail County Attorney, Fergus Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M, Judge; and Halbrooks, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

HOOTEN, Judge

In this appeal from a conviction for possession of a firearm by an ineligible person in violation of Minn. Stat. § 624.713, subd. 1 (2018), appellant argues that his conviction must be reversed for insufficient evidence because the state failed to prove that a shotgun and a rifle found in his residence constituted "firearms." We affirm.

FACTS

In January 2019, Reynolds was sentenced to supervised probation following his convictions of first-degree arson and three counts of mistreatment of animals**.** Due to his convictions, Reynolds was prohibited from possessing firearms or dangerous weapons. On June 19, 2019, Reynolds' supervising probation agent, Wade Erickson, received a tip from the Otter Tail County sheriff's office that Reynolds may be violating express conditions of his parole. Agent Erickson, accompanied by two other department of corrections agents, three police officers, and a member of the Otter Tail County Humane Society, went to Reynolds' home to investigate.

While Agent Erickson and another department of corrections agent were speaking with Reynolds inside of his home, one of the police officers, who was standing in the "door jam," saw what appeared to be a shotgun inside of the home. The officer alerted Agent Erickson, who investigated and determined that the item was a 12-guage double-barrel break-action shotgun. After handing the shotgun to law enforcement, Agent Erickson searched Reynolds' home and located a .22 caliber, bolt-action rifle. Respondent State of

Minnesota charged Reynolds with two counts of possession of a firearm by an ineligible person, in violation of Minn. Stat. § 624.713, subd. 1(2) (2018).

At trial, the state introduced photographs of the shotgun and the rifle. Agent Erickson testified that he is not a firearms expert but is "very much so" familiar with shotguns and that based on his experience, the shotgun found in Reynolds' home appeared to be functional. Agent Erickson testified that the shotgun was a real firearm and that neither the shotgun nor the rifle appeared to be toys. When asked about the purpose of a firearm, Agent Erickson testified that they "propel a projectile by means of gas, powder, or any type of compressed air." He further testified that this was true for the guns found in Reynolds' home; the shotgun "would shoot a shell" and the rifle "would shoot a cartridge."

Sergeant Axness, a firearms instructor for the Otter Tail County sheriff's office who had accompanied Erickson to Reynolds' home, also testified at trial. He testified that neither the shotgun nor the rifle located in Reynolds' home appeared to be toys or replicas. Sergeant Axness stated that "firearms" are used for "[a]nything from target [shooting], to self-defense, to hunting." According to Sergeant Axness, Reynolds' rifle "could be used for small game or for target shooting" and Reynolds' shotgun "would be used for killing much larger game." Sergeant Axness also testified that firearms operate by a hammer striking the ammunition primer, causing an explosion that propels the ammunition from the barrel.

Reynolds testified in his defense. He testified that the guns found in his home were a double-barrel, 12-guage shotgun that originally belonged to his grandfather between 1882 and 1945, and an "ordinary" single-shot .22 caliber rifle that a neighbor gave to him when

he was a child. Reynolds maintained that both guns were "antiques," that the shotgun had not been fired "for a long time," and that the last time he fired the rifle was "80 years ago."

Reynolds admitted to having seen his shotgun used "some time ago," probably for "shooting a tin can in the air." Reynolds remarked that shotguns are usually used to shoot "fowl." When asked if the shotgun could shoot at a person, Reynolds responded, "If you had shells, maybe. I suppose it could be."

Reynolds acknowledged that, when the .22 rifle was functional "80 years ago," it could be used to shoot a "rabbit," if it "stood 3 feet in front of you" and could be used to shoot at a person if "they were 3 feet in front of you." However, Reynolds testified that the rifle could not be used to shoot a deer. Reynolds admitted to having shot the .22 caliber rifle when he was younger—around 80 years ago.

The jury found Reynolds guilty of ineligible possession of a firearm for possessing both a 12-guage double-barrel shotgun (count 1) and a .22 caliber rifle (count 2). Since count 2 was a lesser included offense of count 1, the district court adjudicated Reynolds guilty of count 1 only and sentenced him to 60 months. Reynolds appeals.

DECISION

Reynolds claims that the evidence was insufficient to support his convictions of either count of ineligible possession. He does not contest that the state proved that he possessed two guns (a double-barrel shotgun and a .22 caliber rifle) inside his home on June 19, 2019. Rather, Reynolds argues that the state did not present sufficient evidence to prove beyond a reasonable doubt that either gun satisfied the legal definition of "firearm"

under Minn. Stat. § 624.713, subd. 1, given the Minnesota Supreme Court's holding in *State v. Glover*. 952 N.W.2d 190 (Minn. 2020).

When reviewing a case for sufficiency of the evidence, our review "is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). We will not reverse a conviction for insufficient evidence if the jury, acting with due regard for the presumption of innocence and the necessity of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the offense. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004).

The jury found Reynolds guilty of two counts of ineligible possession of a firearm under Minn. Stat. § 624.713, subd. 1(2), which prohibits people previously convicted of a crime of violence from possessing any "pistol or semiautomatic military-style assault weapon or . . . any other firearm." However, the term "firearm" is not defined by the statute. *Glover*, 952 N.W.2d at 193. "Neither does the criminal code provide a general definition." *State v. Knaeble*, 652 N.W.2d 551, 554 (Minn. App. 2002), *review denied* (Minn. Jan. 21, 2003). Because our inquiry turns on the statutory meaning of the term "firearm," we first consider whether Reynolds' shotgun and rifle are "firearms" under Minn. Stat. § 624.713, subd. 1. We review questions of statutory interpretation de novo. *State v. Haywood*, 886 N.W.2d 485, 488 (Minn. 2016). We "interpret statutory language

to 'ascertain and effectuate' the Legislature's intent." *State v. Bowen*, 921 N.W.2d 763, 765 (Minn. 2019) (quoting Minn. Stat. § 645.16 (2018)). "If the Legislature's intent is clear from the statute's plain and unambiguous language, then we interpret the statute according to its plain meaning . . . ." *State v. Rick*, 835 N.W.2d 478, 482 (Minn. 2013). "If a statute does not define a word or phrase," we may "look to the dictionary definitions of th[e] words and apply them in the context of the statute." *State v. Prigge*, 907 N.W.2d 635, 638 (Minn. 2018).

In considering whether distress flare launchers are "firearms" under Minn. Stat. § 624.713, subd. 1, the supreme court in *Glover* referenced multiple dictionary definitions to determine the statutory definition of "firearm." *Glover*, 952 N.W.2d at 193. The court ultimately held that a "firearm" as used in Minn. Stat. § 624.713, subd. 1, is a "weapon, that is, an instrument designed for attack or defense, that expels a projectile by the action or force of gunpowder, combustion, or some other explosive force." *Id.* at 195.

To that end, the court held that a distress flare launcher was not a "weapon" because the evidence established that the distress flare launcher's purpose was for "signaling others for assistance and ensuring that firefighters can ignite wildfires." *Id.* at 194. Because the distress flare launcher was not "designed for attack or defense," the court held that it was "not a weapon and, thus, cannot be a firearm under Minn. Stat. § 624.713, subd. 1." *Id.* To summarize, *Glover* articulates that, to be a "firearm" under Minn. Stat. § 624.713, subd. 1, a device must meet two criteria. First, it is a weapon, that is, an "instrument designed for attack or defense." *Id.* Second, the device must "[expel] a projectile by the action or force of gunpowder, combustion, or some other explosive force." *Id.* at 195; *see also*

Haywood, 866 N.W.2d at 490 (holding that an "air-powered BB gun is not a firearm" because it does not operate by an "explosive force").

Reynolds relies on *Glover* to support his argument that the state failed to prove beyond a reasonable doubt that his shotgun and rifle were "weapons" and thus "firearms" under Minn. Stat. § 624.713, subd. 1. Reynolds contends that the state's evidence supporting his convictions was insufficient because it did not include specific evidence satisfying *Glover*'s definition of the term "weapon": "an instrument designed for attack or defense." 952 N.W.2d at 194. Specifically, he argues that the "state did not present any evidence from the manufacturers regarding the design or purpose of either device." Thus, Reynolds contends, the testimony from the state's witnesses, Sergeant Axness and Agent Erickson, was insufficient to prove that the guns found in his home constituted "firearms" as defined by *Glover*.

In relying so completely on *Glover*, Reynolds ignores additional controlling Minnesota caselaw, as *Glover* is not the first time that Minnesota courts have interpreted the statutory definition of "firearm" for purposes of felon-in-possession statutes. In *State v. Dendy*, we reviewed dictionary definitions of "firearm" and concluded that "it cannot reasonably be disputed that a hunting shotgun is a firearm" under Minn. Stat. § 624.713, subd. 1(b) (1998). 598 N.W.2d 4, 6–7 (Minn. App. 1999), *review denied* (Minn. Sep. 28, 1999). A few years later, in *Knaeble*, we held that inoperable guns meet the definition of "firearms" under Minn. Stat. § 609.165, subd. 1b(a) (2000), which prohibits the possession of "a firearm" by a person who has been convicted of a crime of violence unless ten years have elapsed since the person's restoration to civil rights. 652 N.W.2d at 554–55.

Under *Knaeble*, which controls our analysis in this case, Reynolds' argument that an inoperable gun does not meet the definition of "firearm" under Minn. Stat. § 624.713, subd. 1, fails. Just as it cannot be disputed that a hunting shotgun is a "firearm," *Dendy*, 598 N.W.2d at 7, we conclude that it cannot reasonably be disputed that a .22 caliber, bolt-action rifle is a "firearm," as we have affirmed—albeit in nonprecedential cases—convictions of felons in possession of a firearm when the felons possessed a hunting rifle. *See State v. Kruse*, No. A04-2121, 2005 WL 2739324, at *1 (Minn. App. Oct. 18, 2005); *State v. Draack*, No. A11-1305, 2012 WL 1658903, at *1–2 (Minn. App. May 14, 2012). Because actual shotguns and rifles are "firearms" as a matter of law under subdivision 1, we hold that when the evidence produced at trial proves that an item is a real shotgun, rifle, or any other cartridge-firing gun—even if the gun is no longer operable—no additional evidence is needed to prove that the item is a "weapon" and thus a "firearm" under subdivision 1.

Here, the state offered evidence that Reynolds' guns were a double-barrel shotgun and a .22 caliber rifle, and that these guns were real. Viewing this evidence in the light most favorable to the guilty verdict, the jury could have reasonably concluded that both guns were firearms under subdivision 1 because real shotguns and rifles are "firearms" as a matter of law and because inoperable guns meet the definition of "firearm" under subdivision 1. The evidence produced by the state is therefore sufficient to support Reynolds' convictions on two counts of being an ineligible person in possession of a firearm, in violation of Minn. Stat. § 624.713, subd. 1(2).

Reynolds' supplemental pro se brief raises two additional claims, neither of which warrant relief. First, Reynolds claims his conviction violates the Second Amendment. Reynolds failed to raise and preserve his arguments on this issue by presenting them to the district court, and his arguments on appeal are therefore forfeited. *Doe 175 ex rel. Doe 175 v. Columbia Heights Sch. Dist., ISD No. 13*, 842 N.W.2d 38, 43 (Minn. App. 2014). Even if we did consider the issue on its merits, however, the recognition of a person's right to bear arms does not "cast doubt on longstanding prohibitions on the possession of firearms by felons," as felon dispossession statutes are "presumptively lawful regulatory measures." *District of Columbia v. Heller*, 554 U.S. 570, 626, 627 n.26, 128 S. Ct. 2783, 2816, 2817 n.26 (2008). Second, Reynolds claims that the guns were found in his home during an unlawful warrantless search, in violation of the Fourth Amendment. Because Reynolds also failed to raise this issue in district court, it is not properly before this court for review, and we decline to address it. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Affirmed.